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IN THE
Supreme Court of the United States

OCTOBER TERM, 1970

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No. 144
—

EUGENE GRIFFIN, etc., ET AL.,

Petitioners.

v.

LAVON BRECKENRIDGE, ET AL.,

Respondents.

—
ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

—
BRIEF FOR RESPONDENTS

—
HELEN J. McDADE

P.O. Box 112
DeKalb, Mississippi 39328

W. D. MOORE

P.O. Box. 305
Philadelphia, Mississippi 39350

Attorneys for Respondents



(i)

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STATUTE INVOLVED

The full text of 42 U.S.C. 1985(3) is as follows:

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly, or indirectly, any person or class of persons of the equal protection of the laws; or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory

from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

ISSUE PRESENTED

The only issue presented in this case is whether or not the lower court erred in dismissing the claim for relief by Appellants under 42 U.S.C. 1985(3) for the reason that the claim for relief did not state a cause of action under Section 1985(3) Title 42 U.S.C. in that the allegations of said claim did not charge that the alleged conspiracy and the alleged damages were committed under color of law.

ARGUMENT

The complaint filed by the Appellants in this cause was attempted to be instituted under and by virtue of the provisions of 42 U.S.C. 1985(3), but said complaint wholly failed to allege that the cause of action alleged to have been committed by the Appellees was done under color of law.

In the case of *Swift, et al., v. The Fourth National Bank of Columbus, Georgia, et al.*, 205 Fed. Supp. 563, it was held as follows:

"Section 1985 is aimed at conspiracy, but only when the object of conspiracy is the deprivation of equality before the law—the equal protection of the law—and does not cover conspiracy to deprive a person of his property without due process. Also, this section 1985, is directed to state action, and the invasion of an individual's rights by another individual or individuals is not within its purview."

The complaint filed in this cause did not charge a massive conspiracy, and it was held in *Bryant v. Donnell*, 239 Fed. Supp. 681 as follows:

"Complaint which alleged that defendants' conspired to deprive plaintiffs of rights protected by civil rights statutes, and private citizens arrested plaintiffs but did not allege massive conspiracy where hinderance of law enforcement officers or enlistments of officers conspiracies did not show denial of law protection or equal immunities or privileges and hence did not state claim under civil rights conspiracies, Title 42 U.S.C. 1985(3)"

In the controlling case of *COLLINS V. HARDYMAN*, 341 U.S. 651, the Court dealt with the issue presented in this case at length and has settled the issue and this case has become a landmark case on the question involved in this case. The Court, in ruling upon this question, had the following to say with reference to the issue involved herein:

"What we have here is not a conspiracy to affect in any way these plaintiffs' equality of protection by the law, or their equality of privileges and immunities under the law. There is not the slightest allegation that defendants were conscious of or trying to influence the law, or were endeavoring to obstruct or interfere with it. The only inequality suggested is that the defendants broke up plaintiffs' meeting and did not break up meetings of others with whose

sentiments they agreed. To be sure, this is not equal injury, but it is no more a deprivation of 'equal protection' or of 'equal privileges and immunities' than it would be for one to assault one neighbor without assaulting them all, or to libel some persons without mention of others. Such private discrimination is not inequality before the law unless there is some manipulation of the law or its agencies to give sanction or sanctuary for doing so. Plaintiffs' rights were certainly invaded, disregarded and lawlessly violated, but neither their rights nor their equality of rights under the law have been, or were intended to be, denied or impaired."

It is contended by the Appellants that *Collins v. Hardyman*, Supra, is not applicable to the issue involved herein for the reason that all of the parties in said cause were of the white race. However, in the case of *Bryant v. Donnell*, Supra, the parties were both white and negro, and the court adopted the rule set out in *Collins v. Hardyman* as the same rule in the case of *Bryant v. Donnell*, Supra.

The Appellants refer at length to the case of *U.S. v. Guest*, 383 U.S. 745 as their authority in this cause of action. However, this case was based on criminal statutes, nor civil, and the Court was careful to point out that the issues therein were a statutory construction, not a constitutional power. Also, the indictment in this cause charges an offense under "color of law." It will also be noted that a question was presented involving the rights of persons to engage in interstate commerce.

In the case of *Koch v. Zwieback*, 316 Fed. 2d., 1, the Court held as follows:

"At least some of the conspirators must be acting under color of state law before action can be maintained against them under Civil Rights Act, 42 U.S.C.A., Section 1985(3)." This case further held: "allegations that acts complained of were committed by defendants neither as Federal officials under color of Federal law or as individuals acting beyond scope of their official authority were not sufficient

to serve as basis for cause of action under Civil Rights Act, 42 U.S.C.A. Section 1985(3)." The court held in this case that same should be dismissed for lack of jurisdiction.

CONCLUSION

For the foregoing reasons, Respondents (Appellees) respectfully submit that the Court below did not err in dismissing the complaint for failure to state a claim for relief under 42 U.S.C. 1985(3).

Respectfully submitted,

HELEN J. McDADE,
P.O. Box 112,
DeKalb, Mississippi 39328

W.D. Moore
P.O. Box 305,
Philadelphia, Mississippi 39350
Attorneys for Respondents